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Interim guidance on Constituent Services Accounts

This information is offered as informal guidance while House Bill 462 is implemented through formal rulemaking. It's intended to answer common questions based on the plain and unambiguous language of HB 462. 1

A host of other questions can't be answered until the rulemaking process is completed. That process is underway and is likely to continue over the next six to eight months.

1. Can I use the same bank account for my campaign account and my constituent services account?

No, you can't use the same account - separate accounts are required. (13-37-205; 13-37-402, MCA)

2. I took new money into my constituency account after I closed my '06 campaign account after the election. What requirements apply for reporting and expending these funds?

HB 462 did not impose recordkeeping or reporting requirements on constituent accounts that existed before the effective date of the new law - May 14, 2007. Only accounts created on or after that date are subject to the requirements of the new legislation.

HB 462 did, however, re-affirm the prohibition against using such accounts for personal benefit and the prohibition on contributions to another campaign (13-37-240, MCA).

It would be prudent to account for contributions and expenditures just as you do campaign contributions and expenditures. Question and answer number 5 may be helpful as well.

3. Will I be able to keep my pre-existing account open after November 2008? In other words, can I have two or more constituent accounts at the same time?

A host of issues related the disposition of accounts existing prior to the effective date of HB 462, the phrase "leaves public office," and related terms and issues must be taken up in rulemaking.

1 HB 462 is codified as Sections 13-37-401 and 402, MCA in the new Montana Code Annotated. HB 462 amended Section 13-37-240, MCA.

4. How long can I keep a campaign account open and how do I report if I don't close the account?

There's no requirement in current law to close a campaign account within a certain time.

Montana Code provides:

A closing report shall be filed following an election whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign." (12-37-228(3), MCA)

Typically, accounts are closed when outstanding debt is retired and no further transactions are anticipated.

Statewide candidates who don't close their accounts must continue reporting contributions and expenditures (form C-5). Reports are due on the 10th day of March and September of each year following an election until a closing report is filed.

5. I have money in a constituent services account from surplus campaign funds and other sources. Do I need to dispose of these funds, and open a new constituent account after the 2008 election using only surplus campaign funds?

This issue will be addressed in the upcoming rulemaking. However, those who have accounts consisting of funds other than surplus campaign funds should be aware of the so-called gift ban in the Code of Ethics:

A public officer, legislator, or public employee is prohibited from accepting a gift of substantial value (value of \$50 or more, Section 2-2-102(3), MCA) or a substantial economic benefit tantamount to a gift that would improperly influence "a reasonable person" to depart from the faithful and impartial discharge of public duties or that a reasonable person should know is primarily for the purpose of rewarding the person for official action taken. (2-2-104(1)(b), MCA)

Further information is on the web at

<http://politicalpractices.mt.gov/default.asp>

6. If I spend money for any reason from my pre-existing constituent account, do I have to report?

There was little guidance in law prior to HB 462.

Be aware of the prohibition against using such accounts for personal benefit as defined in 13-37-240, MCA, and the prohibition on contributions to another campaign.

It would be prudent to account for receipts and expenditures just as you do campaign receipts and expenditures.

7. Can I accept contributions to my current account?

Again, there is little specific guidance in regard to accounts in existence prior to the effective date of HB 462 (May 14, 2007).

Be aware of the requirements of the so-called gift ban (described in answer 5 above.) Also, be aware of the prohibition against using such accounts for personal benefit and the prohibition on contributions to "another campaign, including the candidate's own future campaign. (13-37-240, MCA; 44.10.335 and 44.10.336, ARM)

8. What are acceptable expenditures from my current account? How do I report?

For accounts established prior to the effective date of HB 462, see the answer to number 6 above.

9. I plan on attending a conference related to my legislative work and the conference sponsor has offered me a scholarship and plane fare. Does this violate HB 462? The gift ban? What if a business offers to pay my expenses to attend?

These topics are not specifically addressed in HB 462. However, defining activity that falls within the term "constituent services" and defining who is a "constituent" will be taken up in rulemaking.

The Department of Administration provides guidance for state employees in state travel policy under the heading *Third Party Reimbursement* at

http://doa.mt.gov/doatravel/pdfs/travelpolicy_2006.pdf

For a brief discussion of the so-called "gift ban", see answer #5 above, as well as related information on the Commissioner of Political Practices website.

<http://politicalpractices.mt.gov/default.asp>

While this information does not speak directly to the situation, you may find it helpful.

10. Can I dispose of constituent services account funds by donating to a ballot issue campaign or another candidate?

No. There are two express prohibitions on the use of surplus campaign funds in 13-37-240, MCA. It is unlawful to use these funds for personal benefit. "Personal benefit" is defined further in 44.10.336, ARM. It is also unlawful to contribute surplus campaign funds to "another campaign, including the candidate's own future campaign."

A host of issues must be taken up in rulemaking, including defining activity that falls within the term "constituent services," disposition of accounts existing prior to the effective date of HB 462, the phrase "leaves public office," and related terms and issues.